

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID BILLUPS,

Plaintiff(s)

vs.

HAROLD CARTER,

Defendant(s)

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Case Number: 1:01cv731-SJD

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge David S. Perelman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on February 2, 2004 Report and Recommendations (Doc. 23). Subsequently, the plaintiff filed objections to such Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

IT IS ORDERED THAT petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is hereby DENIED with prejudice.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

A certificate of appealability shall not issue because, for the reasons stated in the Report

and Recommendations, petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether his claims should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.” *Miller-El v Cockrell*, 537 U.S. 322, 323-24 (2003) (quoting *Slack v McDaniel*, 529 U.S. 473, 483-484 (2000))(in turn quoting *Barefoot v Estelle*, 463 U.S. 880, 893 n.4 (1983)).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge